IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3855 OF 1987

Kirti M. Kothari. .. .. Petitioner

versus

1. Union of India
2. Collector of Customs, Bombay. .. .. Respondents

Mr.K.R. Bulchandani for petitioner.
Mr.A.S.Rao for respondents.

CORAM : H.L. GOKHALE &
V.R. KINGAONKAR, JJ.
DATED : 20th July 2006

ORAL JUDGMENT : (Per H.L.Gokhale, J.)

1. Heard the learned Counsel for the parties.

2. The petitioner herein is a disabled person suffering from Polio, whereby his left arm is affected. The year 1981 had been declared as "The International Year for the Physically Handicapped Persons". It was in keeping with such declaration, the Government of India introduced a policy under which the physically handicapped persons were permitted to import cars with appropriate modifications/designs which would be suitable for their use. Under that policy they

were also not required to produce Customs Clearance Permit ("CCP" for short). The custom duty leviable was only 50% of the ad-valorem value. It is the case of the petitioner that accordingly he imported the vehicle but the respondents insisted on the CCP. It is, therefore, that the petitioner is constrained to file the present petition.

3. The petition came up for consideration before a learned Single Judge (Mrs.Manohar, J., as she then was in this Court) on 11th December 1987 and an order was passed granting interim relief in terms of prayer clause (c) of the petition, whereby the petitioner was permitted to obtain clearence of said car under the exemption order which he had received from the Central Government and under which he had imported the vehicle. The petition was also admitted on that date.

4. Brief facts leading to the filing of this petition are stated as follows:-

. The petitioner imported the car with appropriate modification under paragraph 104 of the Central Government Policy read with

Notification No.152 of 1983 dated 25th May 1983 read with Import Trade Control Order dated 15th April 1983. Prior thereto, he had applied for exemption order on 23rd September 1982. On the queries raised by the Ministry of Finance, he was required to give a medical examination report and file his tax report. The petitioner submitted all the necessary documents and complied with the requisitions.

5. Many other persons situated similarly like the petitioner were also awaiting clearance for such an import. Difficulties were raised by the respondents and, therefore, some of them filed a Writ Petition in the Delhi High Court being Writ Petition No.1336 of 1983. That Writ Petition was heard by a Division Bench of the Delhi High Court and the Division Bench, by its judgment and order rendered on 5th December 1983, directed the Union of India to see that the policy for the benefit of disabled persons is implemented correctly, and not perverted by creating difficulties. The petitioner had also filed a similar petition (W.P. No. 1500 of 1983) in the Delhi High Court and was granted identical relief.

6. Against this judgment and order of the Delhi High Court, the respondents filed an Appeal to the Supreme Court. That Appeal came to be dismissed by an order dated 12th July 1985 passed by the Apex Court. Pursuant to the High Court's order, the petitioner was issued an exemption order bearing No.259 dated 26th September 1986, which permitted the import of Nissan/Sunny 1500 CC car. This permission granted by the Central Government laid down three conditions to avail of the benefit thereunder. The conditions were (i) the car so imported shall not be sold without the permission of the Government, (ii) the car will remain in possession, control and use of the disabled persons and (iii) CIF value of the car will not exceed Rs.65,000/-. If these conditions were fulfilled, his import was exempted from (a) duty of customs in excess of 50% of the ad-valorem amount, (b) the entire auxillary duty of the customs which would be leviable under sub-section (1) of Section 49 of the Finance Act, 1986 and (c) additional duty leviable under Section 3 of the Customs Tariff Act, 1975. It is material to note that this exemption order specifically stated at the foot thereof that no import licence or CCP will be necessary for clearance of a vehicle,

where the importer has been allowed customs duty relief by the Department of Revenue, New Delhi, on the vehicle in question under the provisions pertaining to the grant of relief from Customs duty on motor cars specially designed or adapted for use by disabled persons for their own use. The importer was to produce evidence of customs duty relief granted to him. The import was subject to the same conditions on which duty relief has been given.

7. Thus, the exemption order was quite clear that the CCP was not necessary for import of this car. Even so, the Authorities of the respondents insisted that the CCP be produced by the petitioner for clearance of the vehicle which action is challenged in the present petition.

8. A reply dated 12th November 2003 has been filed on behalf of the respondents by one Mr.D.H. More, Assistant Commissioner of Customs. It is rather unfortunate that the reply makes some wrong statements. In paragraph-2 thereof, it is stated that the petitioner is claiming the import without any payment of duty. That is not so. He is required to pay 50% of the duty and he is/was all

throughout ready to pay it. The reply thereafter states that the petitioner has not made it clear as to how he is physically handicapped. That is the basis of his claim which is stated in paragraph 1 of the petition and that was also stated to the respondents and the medical certificates were given and thereafter only the exemption order was passed. It is thereafter stated that the exemption order was subject to the conditions that the car imported will not be sold without permission of the Government and it will remain with the person concerned all throughout.

9. Last but not the least a submission is made that since the import was made in the year 1987, the Import Policy of 9th July 1988 will be applicable. This is most surprising inasmuchas the policy which was not in existence on the date of the import is sought to be applied by the respondents. It shows a completely bureaucratic attitude on their part and, therefore, the Delhi High Court was quite correct in directing that the policy for the benefit of the disabled persons should be implemented as it is and should not be perverted. In spite of such observations of the Delhi High Court, what we find is the attitude

which is not a very helpful one considering that the Government has framed the policy for the benefit of the disabled persons and yet the officers concerned are not implementing it.

10. The petitioner has filed a rejoinder in which he has enclosed the medical examination report which was given when the application was made for the vehicle and he has also enclosed the Government Notification dated 25th May 1983 which mentions various disabilities and the benefits that would be available to such disabled persons.

11. There are two other aspects which we must note that originally in the exemption certificate instead of "Mr.Kirti Kothari" it was wrongly mentioned as "Mrs.Kirti Kothari. The vehicle was meant for the petitioner who is a gentleman and, therefore, the order was subsequently corrected from "Mrs.Kirti" to "Mr.Kirti". Besides, the original import permitted was for Nissan/Sunny 1500 Sodan S.L. car. It appears that on request of the petitioner, an order was issued by the respondents later by their letter dated 26th February 1986 permitting the petitioner to purchase MAZDA 323 Hatch Back, 1300 cc Model BG 37

with Automatic Transmission, Front Seat Belt, Multi Hand Grip and necessary fitments for left hand disability. It is this vehicle which the petitioner had purchased and which he has been plying after the interim order was passed by this Court. Mr.Bulchandani, learned Counsel appearing for the petitioner, has informed us that the car has been with the petitioner all throughout and has shown us the RC certificate and other documents of the car. A xerox copy of the R.C. book is taken on record.

12. We find that the laudable purpose of the Government policy was to give helping hand to physically challenged persons. Normally, import of luxury items like cars/vehicles would not have been encouraged. Still, however, in case of physically challenged persons, the exemption was provided, since such specially designed/modified versions of the car vehicles could not be easily made available in India, at the relevant time. The difficulties of physically challenged persons in driving automobiles was sought to be removed under the Government policy in question. It can be gathered that misuse of such exemption was also taken care of and remedied under the said policy.

Obviously, the concerned Customs Officer ought not to have insisted upon production of CCP by the petitioner. Inspite of the clear directions under Notification dated 25th May, 1983, the concerned Customs Officer asked the petitioner to produce the CCP, which was not necessary at all. This is a classic example of how benevolent provision made by the Government, aimed at bringing about social justice, particularly, in relation to the physically challenged persons is thwarted by the Government officials. Instead of proper implementation of the beneficial policy, the concerned official/s tried to put spokes in its implementation. We are dismayed to see the approach of the Government official/s in denying benefits of the policy to the petitioner without any reason or rhyme and also in putting up serious contest to his claim in the Court.

13. It is well settled that as and when certain Government Policy is declared in favour of a section of the society, thereby granting some benefits to them, it is required to be implemented by the concerned Department. The implementation of such beneficial policy cannot be obstructed by the Government officials without existence of

substantial reasons. In the present case we find that there was no reason for the concerned Customs Officer to demand CCP from the petitioner. Consequently, the impugned administrative action is invalid and the direction issued by the respondents will have to be interfered with. We may usefully refer to the case of **Daya Ram Tripathi V/s. State of U.P. and Another, 1986 (Supp) SCC 497** in the present context. In the said case, during the year 1981, which was declared as "The International Year for the Physically Handicapped Persons", the U.P. Government provided for reservation of posts for physically handicapped persons in the State services. But, by a subsequent letter, the Government directed UPPSC not to make such reservations in "Recruitment on the basis of Combined State Services Examination, 1978". The Apex Court has observed as follows :-

"The necessity of making appointment of physically handicapped persons to the reserved post was impressed upon all the Secretaries, Heads of Department and Commissioners and it was particularly brought to their attention that 1981 had been declared as 'The International year for the Physically Handicapped Persons'. It was also directed that vacancies should be carried forward and efforts should be made to ensure that the maximum number of physically handicapped persons were appointed. In the face of this communication from the Chief Secretary, we think that it is now

futile for the Government to contend that the appellant cannot be appointed to the provincial civil service (Executive Branch) having announced their determination, very rightly too in our opinion, to rehabilitate physically handicapped persons by reserving posts for them in all the services of the Government, the Government cannot now create needless hurdles."

. We notice that the respondents herein did creat needless hurdles by asking production of CCP from the petitioner. Having noted the rival submissions and the bureaucratic stand of the respondents, we are of the opinion that the directions issued by the respondents to the petitioner that he should produce CCP was quite illegal and must be interfered with.

14. For the reasons stated above, we allow the petition and set aside the requirements of the Customs Clearance Permit. The respondents will hand over the original Bank Guarantee to the petitioner duly cancelled within two weeks. That will enable the petitioner to get back his Fixed Deposit Receipt and the share certificates from his Bank.

15. The petitioner had paid 50% of the import duty i.e. Rs.52,000/- which in fact is the entire

duty under the exemption order. It is only because the respondents insisted on the CCP being tendered that by way of abundant caution, the Court directed the petitioner to give a Bank Guarantee for the remaining 50% amount in the event the petitioner would fail to produce the CCP and this CCP being held to be mandatory requirement. It is very clear and it is not so and, therefore, the Bank Guarantee will be discharged.

16. As stated earlier, the Car was released in favour of the petitioner as a result of the interim order passed by this Court. The petitioner was then called upon to furnish Bank Guarantee for remaining amount of Rs. 52,000/- as per order dated 11th December, 1987 passed by this Court. The petitioner pledged fixed deposit of Rs. 10,000/- and some shares on basis of which the Bank of India, Branch at Maheshwari Udyan, Mumbai, furnished the Bank Guarantee. Mr.Bulchandani, learned Counsel appearing for the petitioner, points out that to keep the Bank Guarantee alive, the petitioner was required to pay an amount of Rs.1660/- per year. Thus, during a period of 18 years, by now, he has paid the Bank

a sum of Rs.29,880/-. He has lost the interest on this amount and if we award an appropriate interest on this sum, the amount will be quite large. The petitioner has been forced to suffer this litigation for no fault of his. The exemption order in terms stated that the petitioner being physically handicapped, no import licence or CCP was necessary. In spite of that, the officer concerned, from the Customs Department, insisted on the CCP, making it necessary to the petitioner to file the present petition. The petitioner would, therefore, be entitled to the costs of the petition. As stated by us above, he would be entitled for too larger amount, but Mr.Bulchandani, having taken instructions from the petitioner, who is present in the Court, states that the petitioner will be satisfied if the respondents are directed to pay a sum of Rs.50,000/- towards the payment which was required to be made to the Bank, the lost interest thereon and costs of the petition. In our view, this is quite a fair expectation.

17. Accordingly, we allow the petition. The respondents are directed to pay a sum of Rs.50,000/- towards the expenditure incurred by

the petitioner to keep the Bank Guarantee alive, the lost interest and costs of the petition.

18. It will be open to the respondents to recover the amount from the officer concerned of the Customs Department, by following proper procedure. The respondents will make the payment of Rs.50,000/- to the petitioner by end of September 2006.

(H.L. GOKHALE, J.)

(V.R. KINGAONKAR, J.)